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SENATE BILL 842

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO PUBLIC FINANCING OF ECONOMIC DEVELOPMENT; PROVIDING
FOR TAX OFFSETS FOR ECONOMIC DEVELOPMENT; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"State Stimulus Plan Act".

Section 2. DEFINITIONS.--As used in the State Stimulus
Plan Act:

A. "affiliate" means, with respect to any person:

(1) a person who directly or indirectly:

(a) beneficially owns ten percent or
more of the outstanding voting securities or other ownership
interests of the other person, whether through rights, options,
convertible interests or otherwise; or

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1 (b) controls or holds power to vote ten
2 percent or more of the outstanding voting securities or other
3 ownership interests of the other person;

4 (2) a person with ten percent or more of the
5 outstanding voting securities or other ownership interests, of
6 which are directly or indirectly:

7 (a) beneficially owned by the other
8 person, whether through rights, options, convertible interest,
9 or otherwise; or

10 (b) controlled or held with power to
11 vote by the other person;

12 (3) a partnership in which the other person is
13 a general partner; or

14 (4) an officer, employee or agent of the other
15 person, or an immediate family member of the officer, employee
16 or agent;

17 B. "conversion cost" means all costs of closing the
18 SSP fund, including, without limitation, legal, accounting,
19 rating agency, trustee and placement agent fees and expenses
20 and any costs of defeasing the obligations of the SSP provider
21 to the investing investors incurred in connection with the SSP
22 fund;

23 C. "department" means the department of finance and
24 administration;

25 D. "economic development project" means a project

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1 or business that meets the following criteria at the time of
2 the investment:

3 (1) is headquartered in the state and its
4 principal operations are located in New Mexico or at least
5 fifty percent of the employees are employed in the state or the
6 project or business has committed in writing to move into the
7 state as a condition of the investment;

8 (2) the project or business fosters economic
9 development in the state;

10 (3) there is sufficient resources or the
11 forecast or business plan for the project or business projects
12 that the project or business will have sufficient resources to
13 meet any obligations due to the SSP provider as a result of the
14 investment; and

15 (4) it is not a business predominantly engaged
16 in professional services provided by accountants or lawyers;

17 E. "full offset amount" means the total dollar
18 value of tax offsets authorized by the state;

19 F. "fund allocation date" means the date on which
20 the SSP provider receives the investments from the investors
21 that entitle the investors to receive an allocation of the full
22 offset amount;

23 G. "investor" means any person with tax liability
24 under Section 59A-6-2 NMSA 1978;

25 H. "permissible investment" means investments that

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1 at the time of initial purchase or initial investment are:

2 (1) deposits with a financial institution that
3 is a member of the federal deposit insurance corporation;

4 (2) certificates of deposit issued by a
5 financial institution that is a member of the federal deposit
6 insurance corporation;

7 (3) investment securities that are obligations
8 of the United States, its agencies or instrumentalities or
9 obligations that are guaranteed fully as to principal and
10 interest by the United States;

11 (4) commercial paper rated at least A1, P1 or
12 its equivalent by at least one nationally recognized rating
13 organization with a maturity of no more than three hundred
14 sixty-five days;

15 (5) debt instruments rated at least AA or its
16 equivalent by a nationally recognized rating organization, or
17 issued by, or guaranteed with respect to payment by, an entity
18 whose unsecured indebtedness is rated at least AA or its
19 equivalent by a nationally recognized credit rating
20 organization, and is not subordinated to other unsecured
21 indebtedness of the issuer or the guarantor, as the case may
22 be;

23 (6) obligations of this state, or any
24 municipality in this state, or any political subdivision
25 thereof;

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1 (7) interests in money market funds or other
2 mutual funds, the portfolios of which are limited to cash and
3 permissible investments;

4 (8) swaps or other hedging transactions with a
5 counterparty rated at least AA or its equivalent by a
6 nationally recognized rating agency designed to realize or
7 protect the value of a qualified investment; or

8 (9) any other investments approved in advance
9 and in writing by the department;

10 I. "person" means an individual, partnership,
11 association or corporation, including any public service
12 corporation;

13 J. "principal" means:

14 (1) a senior officer or director of a
15 corporation;

16 (2) an individual manager of a limited
17 liability company or a principal of any entity manager;

18 (3) an individual general partner of a
19 partnership or limited partnership or a principal of any entity
20 that serves as a general partner; or

21 (4) an individual in a position of similar
22 authority in an entity not specifically named in this
23 subsection;

24 K. "SSP" means the state stimulus plan;

25 L. "SSP costs" means:

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1 (1) the bona fide costs of forming, organizing
2 and financing the SSP provider;

3 (2) the bona fide costs and expenses of
4 managing and operating the SSP provider, including, without
5 limitation, professional fees and a management fee that is not
6 to exceed two and one-half percent of the full offset amount of
7 tax credits; and

8 (3) distributions to direct or indirect parent
9 entities of the SSP provider, if the SSP is taxed as
10 partnership, equal to any projected increase in federal or
11 state income taxes of such entities, including any related
12 penalties or interest, resulting from the earnings of the SSP
13 provider, without regard to any revenues or expenses from other
14 operations of affiliates of the SSP provider, to the extent
15 that the increase is related to the ownership, management or
16 operations of the SSP provider;

17 M "SSP fund" means the full offset amount
18 allocated less all conversion costs;

19 N. "SSP provider" means the entity designated by
20 the governor to receive investments from investors that earn
21 the investor offsets against state taxes subject to the
22 provisions of the State Stimulus Plan Act;

23 O. "SSP fund creation" means the investment by
24 investors in the SSP provider in accordance with the State
25 Stimulus Plan Act that earns the investors an offset against

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1 state taxes; and

2 P. "state" means the state of New Mexico.

3 Section 3. SSP PROVIDER DESIGNATION. --

4 A. To seek a designation as the SSP provider, an
5 applicant shall submit to the department an application within
6 one hundred fifty days of the effective date of the State
7 Stimulus Plan Act.

8 B. Each applicant shall demonstrate in its
9 application that it meets the following criteria:

10 (1) no principal of the applicant shall have
11 been guilty of a crime involving fraud, theft, embezzlement or
12 moral turpitude;

13 (2) the applicant shall include with its
14 application copies of executed written commitments from the
15 investors committing the investors to invest, in the aggregate,
16 an amount sufficient to earn at least eighty percent of the
17 total tax offsets being allocated pursuant to Section 6 of the
18 State Stimulus Plan Act with no one investor, together with its
19 affiliates, providing commitments for more than twenty percent
20 of the total tax offsets;

21 (3) the applicant, together with the members
22 of its control group, shall have raised at least fifty million
23 dollars (\$50,000,000) in the aggregate for investment in small
24 and emerging businesses within the past five calendar years;

25 (4) the applicant together with its affiliates

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1 shall have raised at least two hundred million dollars
2 (\$200,000,000) for investment purposes within the past five
3 calendar years;

4 (5) the SSP provider shall be a bankruptcy-
5 remote, special purpose entity that has no purpose other than
6 participation under the State Stimulus Plan Act and all related
7 activities; and

8 (6) no investor or affiliate of an investor
9 shall own any equity securities in the SSP provider or any
10 affiliate of the SSP provider.

11 C. The department shall perform background checks
12 of the principals of the applicant to ensure compliance with
13 Paragraph (1) of Subsection B of this section.

14 D. The department may adopt additional rules to
15 govern the application process, including the preparation of
16 forms to be completed as a part of the application process;
17 provided that any such rules or forms shall have been adopted
18 by the department at least thirty days prior to the deadline
19 for receipt of applications under Subsection A of this section.

20 E. The SSP provider will be designated in
21 accordance with existing procurement procedures within ninety
22 days from the date that the State Stimulus Plan Act takes
23 effect.

24 Section 4. STATE STIMULUS PLAN FUND--INVESTMENT.--

25 A. The fund allocation date shall be no longer than

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1 one hundred twenty days from the date on which the SSP provider
2 is designated.

3 B. Until the requirements of Subsection D of this
4 section have been met, SSP funds may be used only for the
5 following purposes:

6 (1) investments in economic development
7 projects;

8 (2) SSP costs; and

9 (c) permissible investments.

10 C. The SSP provider shall invest one hundred
11 percent of the SSP fund in economic development projects, and
12 shall coordinate the investments with the state in accordance
13 with Subsection B of Section 5 of the State Stimulus Plan Act.

14 D. The SSP provider may not make any payments,
15 other than SSP costs, to any affiliate or any other person
16 owning equity securities in the SSP provider until the SSP
17 provider has invested an amount equal to one hundred percent of
18 the total tax offsets earned by the investors under the State
19 Stimulus Plan Act.

20 E. All amounts invested in economic development
21 projects made by the SSP provider shall count toward the
22 investment limit required by Subsection D of this section,
23 including money returned to the SSP provider by or as a result
24 of a prior investment in an economic development project.

25 F. Any investment that is an economic development

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1 project at the time of the SSP provider's initial investment
2 shall be classified as an economic development project for any
3 follow-on investment by the SSP provider so long as the
4 economic development project still meets the criteria in
5 Paragraphs (1) and (2) of Subsection D of Section 2 of the
6 State Stimulus Plan Act.

7 G. Investments from the SSP fund must be made at
8 the rate of at least ten percent of the full offset amount per
9 year, except for the first year; twenty percent must be
10 invested by the end of the second year; otherwise the
11 management fee will be reduced by the percentage equal to the
12 cumulative investments made divided by the cumulative
13 investment target for that year subtracted from one hundred
14 percent. Such determination shall be made during the annual
15 audit as authorized in Subsection D of Section 5 of the State
16 Stimulus Plan Act.

17 H. Any SSP funds not held in economic development
18 projects shall be held in cash or permissible investments.

19 I. The department shall render a written
20 determination on whether a proposed investment is an economic
21 development project or a permissible investment, as the case
22 may be, within twenty days of its receipt of a written request
23 from the SSP provider. If the department fails to respond
24 within such twenty-day period, the proposed investment shall be
25 deemed to qualify as an economic development project or

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1 permissible investment, as requested by the SSP provider.
2 Absent fraud or material misrepresentations by the SSP provider
3 or its proposed investee, the determination of the department
4 pursuant to this subsection shall be conclusive.

5 Section 5. SSP PROVIDERS--REPORTS. --

6 A. Within thirty days of the closing of the SSP
7 fund creation, the SSP provider shall report to the department
8 the following:

9 (1) the name of each investor from whom the
10 SSP fund was received, including the investor's identification
11 number;

12 (2) the amount of each investor's investment
13 and their offsets of future taxes; and

14 (3) the date on which the money was received.

15 B. Within ninety days of an economic development
16 project investment made by the SSP provider, and in accordance
17 with Subsection I of Section 4 of the State Stimulus Plan Act,
18 the SSP provider shall report to the department the following:

19 (1) the name and address of each company
20 receiving the investment and a description of its business;

21 (2) the amount of the investment and a brief
22 description of the terms;

23 (3) the date on which the money was received;
24 and

25 (4) any other information required by the

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1 department.

2 C. Not later than January 15 of each year, the SSP
3 provider shall report to the department the amount the SSP
4 provider has invested in economic development projects during
5 the previous year, the percentage of the SSP funds invested to
6 determine the threshold required in Subsection G of Section 4
7 of the State Stimulus Plan Act, along with a copy of the
8 material documentation pertaining to such investment and any
9 other information required by the department.

10 D. Not later than April 30 of each year, the SSP
11 provider shall provide to the department an annual audited
12 financial statement for the SSP provider that includes the
13 opinion of an independent accountant.

14 E. Upon investments equaling one hundred percent of
15 the total tax offsets, the SSP provider shall no longer be
16 subject to the State Stimulus Plan Act; except for reporting
17 requests from the department for a period up the term of the
18 tax offsets.

19 Section 6. SSP PROVIDER TAX OFFSETS. --

20 A. Each investor who makes an investment in the SSP
21 provider shall earn vested offsets against future taxes owed to
22 the state equal to the face value of the debt instrument issued
23 by the SSP provider; provided that the aggregate of all taxes
24 permitted to be offset pursuant to this subsection shall not
25 exceed one hundred seventy million dollars (\$170,000,000).

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1 Such offsets shall be earned on the fund date.

2 B. Each investor investing in the SSP provider
3 pursuant to Subsection A of this section may:

4 (1) take up to ten percent of the vested
5 offsets against future taxes owed the state per taxable year
6 for ten consecutive years, beginning with the annual return
7 filed with respect to the calendar year that includes the
8 second anniversary of the fund date; and

9 (2) reduce its estimated payments of tax
10 liability to the state for each taxable year for which offsets
11 are available to offset tax liability by the same percentage as
12 the percentage payment due on each such estimated payment date.

13 C. The offsets against future taxes owed the state
14 that are used by an investor with respect to any taxable year
15 may not exceed the tax liability of the investor for the
16 taxable year.

17 D. Any offsets against future taxes that an
18 investor is permitted to use under Subsections A and B of this
19 section, but is unable to use because of Subsection C of this
20 section, may be carried forward indefinitely and used to offset
21 the investor's tax liability in any subsequent year in which
22 the investor has sufficient tax liability to the state,
23 including in a year in which the investor also uses tax offsets
24 that are allocated to such year pursuant to Subsection B of
25 this section.

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E. An investor that has invested in the SSP provider is not required to reduce the amount of tax included by the investor in connection with the ratemaking for any insurance contract written in this state because of a reduction in the investor's state tax derived from the offsets granted under the State Stimulus Plan Act.

F. If the state taxes that an investor does not pay by virtue of the offsets earned under the State Stimulus Plan Act would constitute a credit against another state tax if paid, the investor shall continue to earn the credit as though the offset taxes were paid by cash.

G. An investor may transfer the offsets it earns under the State Stimulus Plan Act to another investor provided that the transferor delivers to the department within thirty days of the transfer a written notice indicating the name of the transferee, the amount of offsets being transferred and the taxable year or years to which such offsets are allocable as provided in Subsection B of this section.